

JERRY S. BUSBY
Nevada Bar #001107
ANDRE T. MARQUES
Nevada Bar #014737
COOPER LEVENSON, P.A.
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
amarques@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEBBIE NOVOTNY

Plaintiff,

vs.

SMITH'S FOOD AND DRUG CENTERS,
INC., and DOES I through X

Defendants

Case No.:

NOTICE OF REMOVAL

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-21-829503-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

I.

NOTICE OF REMOVAL IS TIMELY

1. On February 16, 2021, Plaintiff DEBBIE NOVOTNY, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

2. SMITH'S was served with process on or about February 22, 2021. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

///

3. The Complaint filed and served on SMITH'S merely alleged "As a direct and proximate result of the aforesaid gross negligence and carelessness of defendant Smith's and Doe defendants, plaintiff Novotny was injured, and thereby experienced great pain and anxiety of body and mind, sustaining damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00)." (Compl. ¶19).

4. Defense counsel learned that the value of this case was sufficient for Federal jurisdiction on June 23, 2021. On that date, Plaintiff served Defense counsel with her Initial List of Witnesses and Documents in the pending State Court litigation. A copy of said disclosure is attached hereto as Exhibit "B". Therein, Plaintiff alleges that her medical specials total \$151,477.83. (Pl.'s Initial List at 2).

Upon receiving this information, Defense counsel learned that the "amount in controversy" exceeds the jurisdictional minimum for diversity jurisdiction.

5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

6. The following pleadings have been entered and/or filed in State Court:

- a. Plaintiff's Complaint filed February 16, 2021;
- b. Affidavit of Service of Summons and Complaint filed February 22, 2021;
- c. SMITH'S Answer to Plaintiff's Complaint filed March 15, 2021;
- d. Plaintiff's Request for Exemption from Arbitration filed March 29, 2021;
- e. SMITH'S Opposition to Exemption from Arbitration filed April 5, 2021;
- f. Plaintiff's Reply filed April 7, 2021;
- g. Commissioner's Decision on Request for Exemption filed April 14, 2021;
- h. Suggestion of Death filed July 21, 2021; and
- i. Amended and Corrected Suggestion of Death filed July 21, 2021.

7. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Clark County, Nevada as of the filing of this notice of removal.

II.

DIVERSITY JURISDICTION EXISTS

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

A. The Amount in Controversy Requirement is Satisfied.

9. Plaintiff's Complaint merely alleged that "As a direct and proximate result of the aforesaid gross negligence and carelessness of defendant Smith's and Doe defendants, plaintiff Novotny was injured, and thereby experienced great pain and anxiety of body and mind, sustaining damages in a sum in excess of Fifteen Thousand Dollars (\$15,000.00)." (Compl. ¶19).

10. In addition to the above, Plaintiff's Initial List of Witnesses and Documents served on June 23, 2021 indicated that Plaintiff's total medical specials claimed in this litigation are \$151,477.83. (Pl.'s Initial List at 2).

B. The Parties Are Diverse.

11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada. (See Compl. ¶1) .

12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio Corporation with its principal place of business in the State of Utah.

III.

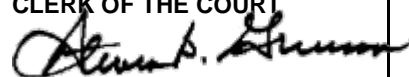
REMOVAL TO THIS JURISDICTION IS PROPER

13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending 28 U.S.C. §108.

EXHIBIT A

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2/16/2021 3:52 PM
Steven D. Grierson
CLERK OF THE COURT



1 **COMP**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 ADAM R. TRIPPIEDI, ESQ.

6 Nevada Bar No.: 12294

7 atrippiedi@bohnlawfirm.com

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 2260 Corporate Circle, Suite 480

11 Henderson, Nevada 89074

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff

CASE NO: A-21-829503-C
Department 18

DISTRICT COURT

CLARK COUNTY, NEVADA

DEBBIE NOVOTNY

CASE NO.:

DEPT NO.:

Plaintiff,

vs.

SMITH'S FOOD AND DRUG CENTERS,
INC., and DOES I through X

Defendants

COMPLAINT

Plaintiff, Debbie Novotny, by and through her attorney, Michael F. Bohn, Esq. alleges as follows.

1. Plaintiff Debbie Novotny is a resident of Clark County, Nevada.

2. Smith's Food and Drug Centers, Inc. ("Smith's") is an Ohio corporation which is authorized to conduct business in Clark County, Nevada.

3. Upon information and belief, at all times relevant to this action Defendants I through X were employees of defendant Smith's, were Nevada residents, were acting within the course and scope of their employment, and were negligent by failing to implement and/or enforce safety rules and protocols, failing to adequately train, maintain, and/or supervise employees and/or contractors, failing to warn of the hazard described herein, in creating the hazard described herein, or in failing to rectify the hazard described herein after having actual or constructive notice of the same.

1 4. That the true names or capacities of defendants I through X inclusive, are unknown to
2 Plaintiff, who, therefore sues said defendants by such fictitious names, and each of them, are
3 predecessors-in-interest, successors-in-interest, and/or agencies otherwise in a joint venture with, and/or
4 serving as an alter ego of any and/or all defendants named herein; and/or are entities responsible for the
5 supervision of the individual, names defendants at the time of the events and circumstances alleged
6 herein; and/or are entities otherwise contributing in any way to the acts complained of and the damages
7 alleged to have been suffered by the Plaintiff herein. Plaintiff is informed and, on that basis believes and
8 thereon allege, that each of the Defendants designated as a DOE in some manner negligently, vicariously,
9 and/or statutorily responsible for the events and happenings referred to and caused damages to Plaintiff
10 as herein alleged. Plaintiff will seek leave of court to amend this complaint to insert the true names of
11 such defendant s when the same have been ascertained.

12 5. On February 21, 2019, plaintiff Debbie Novotny attempted to enter the Smith's location at
13 1000 North Green Valley Parkway, Henderson, Nevada.

14 6. There had been light rain at some point during the evening before Debbie Novotny attempted
15 to enter the store.

16 7. The sidewalk entrance to the Smith's was old, had sustained settlement cracks, was uneven
17 and was slick from the rain. The roof to the Smith's extended out from the doors to the entrance which
18 allowed rain to accumulate outside of the entrance on the uneven surface of the entrance to the store.

19 8. As a result of the cracks in the walkway, and/or the uneven surface, and/or the slick surface
20 from the rain from the portion of the entrance which was not protected by the rain, outside the entrance
21 to the store, Debbie Novotny slipped and sustained injuries to her left leg and which resulted in a
22 fractured fibula and tibia, as well as several other injuries.

23 9. The defendants owed a duty of care to plaintiff Novotny and the general public, customers and
24 invitees, to keep its premises free from dangerous conditions, to warn customers of dangerous conditions
25 and to rectify dangerous conditions.

26 10. Defendants caused, knew of, should have known of, and/or had a non-delegable duty to
27 prevent and protect against the dangerous condition on the premises.

1 11. Further, Defendants failed to adequately train their managers, employees, contractors, and
2 staff to keep its premises free from dangerous conditions, to warn customers of dangerous conditions, to
3 rectify dangerous conditions, and/or maintain and inspect the premises in order to prevent dangerous
4 conditions.

5 12. Further, defendants are vicariously liable for the negligent actions or omissions of any
6 agent or employee that caused the Plaintiff Novotny's injuries.

7 13. Further, defendants failed to have in place adequate inspection and maintenance
8 procedures, or if it had adequate policies, failed to follow those policies, and it was reasonably foreseeable
9 that hazards could come develop as a result of the inadequate policies or failure to follow said policies.

10 14. The dangerous condition described herein caused plaintiff Novotny to suffer personal
11 bodily injury.

12 15. Smith's and doe defendants breached a duty of care owed to the plaintiff by allowing the
13 outside sidewalk to become cracked, uneven to only be partially protected from rainfall, and by failing
14 to place protective covering on the dangerous surface during and after rainfall.

15 16. Smith's and Doe defendants had reason to know facts which could lead a reasonable
16 person to realize that the outside sidewalk was cracked, uneven, only partially protected from rainfall,
17 and susceptible to puddling water and that such a condition created an unreasonable risk of bodily harm
18 to others and involved a high probability that substantial harm would result.

19 17. Smith's and Doe defendants actions constitute an extreme departure from the ordinary duty
20 of care owed to everyone in our community and constitutes gross negligence.

21 18. Smith's and Doe defendants actions constitute a conscious disregard for the rights of the
22 plaintiff Novotny, arising to the level of malice or oppression.

23 19. As a direct and proximate result of the aforesaid gross negligence and carelessness of
24 defendant Smith's and Doe defendants, plaintiff Novotny was injured, and thereby experienced great pain
25 and anxiety of body and mind, sustaining damages in a sum in excess of Fifteen Thousand Dollars
26 (\$15,000.00).

27 WHEREFORE Plaintiff Prays as Follows:
28

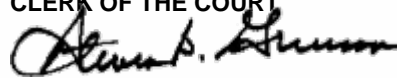
DATED this 16th day of February 2021.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
Attorney for plaintiff

AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

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2/22/2021 10:15 AM
Steven D. Grierson
CLERK OF THE COURT



DEBBIE NOVOTNY

Plaintiff

vs

**SMITH'S FOOD AND DRUG CENTERS INC., Defendant
AND DOES I THROUGH X**

CASE NO: A-21-829503-C

HEARING DATE/TIME:

DEPT NO: 18

AFFIDAVIT OF SERVICE

MICHELLE HARRIS being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS, COMPLAINT, on the 17th day of February, 2021 and served the same on the 22nd day of February, 2021, at 09:50 by:

serving the servee SMITH'S FOOD AND DRUG CENTERS INC., C/O REGISTERED AGENT, CORPORATION SERVICE COMPANY by personally delivering and leaving a copy at (address) 112 NORTH CURRY STREET, CARSON CITY NEVADA 89703 with KRIS OSBORNE, AUTHORIZED TO ACCEPT pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 53.045

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



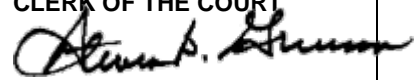
EXECUTED this 22 day of Feb, 2021.

**MICHELLE HARRIS
2019-09792**

Junes Legal Service, Inc. - 630 South 10th Street - Suite B - Las Vegas NV 89101 - 702.579.6300 - fax 702.259.6249 - Process License #1068

EP167559 NOVOTNY

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1 **ANSC**
 2 **JERRY S. BUSBY**
 Nevada Bar #001107
 3 **COOPER LEVENSON, P.A.**
 3016 West Charleston Boulevard - #195
 Las Vegas, Nevada 89102
 4 (702) 366-1125
 FAX: (702) 366-1857
 5 jbusby@cooperlevenson.com
 Attorneys for Defendant
 6 **SMITH'S FOOD & DRUG CENTERS, INC.**

7 **DISTRICT COURT**
 8 **CLARK COUNTY, NEVADA**

9 **DEBBIE NOVOTNY**

10 **Plaintiff,**

11 **vs.**

12 **SMITH'S FOOD AND DRUG CENTERS,**
INC., and DOES I through X

13 **Defendants**

CASE NO.: A-21-829503-C
DEPT. NO.: XVIII

DEFENDANT SMITH'S FOOD & DRUG
CENTERS, INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT

14
 15 COMES NOW, Defendant, SMITH'S FOOD & DRUG CENTERS, INC., improperly designated
 16 as SMITH'S FOOD AND DRUG CENTERS, INC., by and through its attorney of record, JERRY S.
 17 BUSBY, ESQ., of the law firm COOPER LEVENSON, P.A., and hereby answers Plaintiff's Complaint
 18 on file herein as follows:

19 **I.**

20 This answering Defendant states that it does not have sufficient knowledge or information upon
 21 which to base a belief as to the truth of the allegations contained in Paragraphs 1, 3, 4, 5, 6, 7 and 8 of
 22 Plaintiff's Complaint and upon said ground, denies each and every allegation contained therein.

23 **II.**

24 In response to Paragraph 2 of Plaintiff's Complaint, this answering Defendant admits that it
 25 is an Ohio corporation which is authorized to conduct business in Clark County, Nevada. This
 26 answering Defendant denies any remaining allegations contained in said Paragraph.

27 ///

28 ///

III.

Paragraph 9 of Plaintiff's Complaint states a legal conclusion which is the sole province of the Court to determine. This answering Defendant therefore denies said Paragraph.

IV.

This answering Defendant denies each and every allegation contained in Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of Plaintiff's Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff did not use reasonable diligence to care for her injuries, thereby aggravating said injuries as a result. Therefore, Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

SECOND AFFIRMATIVE DEFENSE

At the time and place alleged in Plaintiff's Complaint, and for a period of time prior thereto, Plaintiff did not exercise ordinary care, caution, or prudence for the protection of her own safety, and injuries and damages complained of by Plaintiff in the Complaint, if any, were directly and proximately caused or contributed to by the fault, failure to act, carelessness, and negligence of Plaintiff, and therefore Plaintiff's claims against this answering Defendant should be denied, or any recovery reduced in proportion to said negligence of Plaintiff.

WHEREFORE, this answering Defendant prays that Plaintiff take nothing by virtue of her Complaint on file herein; for costs and disbursements incurred in this action; and for such other and further relief as to the Court may deem proper.

Dated this 15th day of March, 2021.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby
Jerry S. Busby
Nevada Bar No. 001107
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

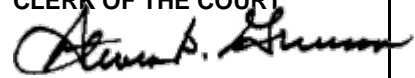
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 15th day of March, 2021, I did cause a true copy of the foregoing **DEFENDANT SMITH'S FOOD & DRUG CENTERS, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Michael F. Bohn, Esq.
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle – Suite 480
Henderson, NV 89074
Attorneys for Plaintiff

By /s/ Theresa H. Rutkowski
An Employee of
COOPER LEVENSON, P.A.

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Steven D. Grierson
CLERK OF THE COURT



1 **ABREA**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No.: 12294
4 atrippiedi@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
6 Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
7 Attorney for plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 DEBBIE NOVOTNY

CASE NO.: A-21-829503-C
DEPT NO.: 18

11
12 Plaintiff,

13 vs.

14 SMITH'S FOOD AND DRUG CENTERS,
INC., and DOES I through X

15 Defendants
16

17 **REQUEST FOR EXEMPTION FROM ARBITRATION**

18 Plaintiff, Debbie Novotny, by and through her attorney, Michael F. Bohn, Esq., hereby requests
19 the above entitled matter be exempted from arbitration pursuant to Nevada Arbitration Rules 3 and 5, as
20 this case involves an amount in issue in excess of \$50,000.00.

21 A summary of the specific facts which supports my contention for exemption is as follows:

22 Plaintiff Debbie Novotny fell and suffered personal injuries. Her medical bills are in excess of
23 \$50,000.00. She is seeking recovery of the cost of her medical treatment, and she is also seeking
24 monetary recovery for pain and suffering. Thus, the amount in controversy exceeds \$50,000.00.

25 I hereby certify pursuant to NRCP 11 this case to be within the exemption cited above and am
26 aware of the sanctions which may be imposed against any attorney or party who without good cause or
27 justification attempts to remove a case from the arbitration program.

1 I further certify pursuant to NRS Chapter 239B and NRS 603A.040 that this document and any
2 attachments thereto do not contain personal information including, without limitation, home
3 address/phone number, social security number, driver's license number or identification card number,
4 account number, PIN numbers, credit card number or debit card number, in combination with any
5 required security code, access code or password that would permit access to the person's financial
6 account.

7 DATED this 29th day of March 2021.

8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ., LTD.

10 By: / s / Michael F. Bohn, Esq. /
11 Michael F. Bohn, Esq.
12 2260 Corporate Circle, Suite 480
13 Henderson, Nevada 89074
14 Attorney for plaintiff

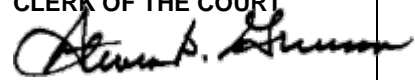
15
16
17
18 **CERTIFICATE OF SERVICE**

19 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of
20 Law Offices of Michael F. Bohn., Esq., and on the 29th day of March, 2021, an electronic copy of the
21 REQUEST FOR EXEMPTION FROM ARBITRATION was served via the Court's electronic service
22 system, addressed as follows:

23 Jerry S. Busby
24 COOPER LEVENSON, P.A.
25 3016 West Charleston Boulevard - #195
26 Las Vegas, NV 89102

26 /s/ /Maggie Lopez/
27 An Employee of the LAW OFFICES OF
28 MICHAEL F. BOHN, ESQ., LTD.

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Steven D. Grierson
CLERK OF THE COURT



ABOPRE
JERRY S. BUSBY
Nevada Bar #001107
ANDRE T. MARQUES
Nevada Bar #014737
COOPER LEVENSON, P.A.
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
amarques@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

DEBBIE NOVOTNY

Plaintiff,

vs.

SMITH'S FOOD AND DRUG CENTERS,
INC., and DOES I through X

Defendants

CASE NO.: A-21-829503-C
DEPT. NO.: XVIII

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S REQUEST FOR
EXEMPTION FROM ARBITRATION**

COMES NOW Defendant SMITH'S FOOD & DRUG CENTERS, INC., ("SMITH'S"), by and through its counsel of record JERRY S. BUSBY, ESQ., of the law firm COOPER LEVENSON, P.A. and hereby submits the following as its Opposition to Plaintiff's Request for Exemption from Arbitration ("Request").

I.

BACKGROUND

This action stems from an incident that allegedly occurred on February 21, 2019, at the SMITH'S grocery store located at 1000 North Green Valley Parkway, Henderson, Nevada. Based upon the lack of evidence and information available at this time, SMITH'S contends that the likely value of this case is below \$50,000.

Plaintiff's Request should be denied on substantive and procedural grounds. Namely, Plaintiff fails to include a summary of facts, including a computation of damages, sufficient to

1 satisfy the requirement necessary for removal. The Court should deny the Request because the value
2 of this case does not exceed the arbitration cap.

3 Plaintiff's Request vaguely mentions that Plaintiff "fell and suffered personal injuries."¹
4 Significantly, Plaintiff's Request fails to include any description of her alleged injuries, any
5 treatment she received as a result of her alleged injuries, any recommendation for future treatment or
6 surgeries. Instead, Plaintiff only claims her "medical bills are in excess of \$50,000."² Thus,
7 Plaintiff's indication that "the amount in controversy exceeds \$50,000.00"³ is insufficient to support
8 a finding that this case has a value in excess of the \$50,000 arbitration cap.

9 In short, the evidence, or lack thereof, at this time indicates that Plaintiff cannot satisfy her
10 burden that her case has a value that exceeds \$50,000 and her request for exemption must be denied.

11 II.

12 LEGAL ARGUMENT

13 NAR Rule 3(A) provides that all civil cases brought in jurisdictions that come under the
14 purview of the program are subject to it if the case has "a probable jury award value not in excess of
15 \$50,000 per plaintiff, exclusive of interest and cost..." Plaintiff has the burden of establishing that
16 her case has a probable jury award value in excess of the arbitration cap of \$50,000.

17 Further, pursuant to Nevada Arbitration Rule 5(A), a Request for Exemption *must* include a
18 summary of facts on which to base a decision. (emphasis added). Requests should contain the nature
19 of the case, amount of damages sought; in personal injury cases, a specific description of the injuries
20 sustained, type of treatment rendered, future treatment recommended, prognosis, and the *total*
21 *amount of medical specials incurred to date should also be included. Id.* (emphasis added).

22 In this case, Plaintiff failed to provide any summary of facts giving rise to this litigation,
23 failed to include the amount of damages sought, a specific description of the injuries sustained, or
24 any description of the treatment rendered. In addition, Plaintiff's Request also fails to mention any

25
26 ¹ See Pl.'s Req. at 1:22.

27 ² *Id.* at 1:22-23.

28 ³ *Id.* at 1:24.

1 recommendation for a future surgery, nor does Plaintiff provide any supporting documentation
2 relating to the need for future treatment. Critically, Plaintiff's Request significantly omits any
3 computation of medical specials incurred to date.

4 Accordingly, Plaintiff's Request must be denied as Plaintiff cannot present evidence
5 indicating that this case has a value in excess of the arbitration cap of \$50,000.00.

6 **III.**

7 **CONCLUSION**

8 Plaintiff has failed to demonstrate that the value of her case is greater than the mandatory
9 arbitration cap of \$50,000. Thus, SMITH'S respectfully requests that Plaintiff's Request for Exemption
10 from Arbitration be denied.

11 Dated this 5th day of April, 2021.

12 COOPER LEVENSON, P.A.

13
14 By /s/ Jerry S. Busby
15 Jerry S. Busby
16 Nevada Bar No. 001107
17 Andre T. Marques
18 Nevada Bar No. 014737
19 3016 West Charleston Boulevard - #195
20 Las Vegas, Nevada 89102
21 Attorneys for Defendant
22 SMITH'S FOOD & DRUG CENTERS, INC.
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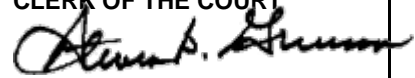
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of COOPER LEVENSON, P.A. and that on this 5th day of April, 2021, I did cause a true copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S REQUEST FOR EXEMPTION FROM ARBITRATION** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Michael F. Bohn, Esq.
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle – Suite 480
Henderson, NV 89074
Attorneys for Plaintiff

By /s/ Theresa H. Rutkowski
An Employee of
COOPER LEVENSON, P.A.

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4/7/2021 2:11 PM
Steven D. Grierson
CLERK OF THE COURT



1 **RPLY**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 ADAM R. TRIPPIEDI, ESQ.

6 Nevada Bar No.: 12294

7 atrippiedi@bohnlawfirm.com

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 2260 Corporate Circle, Suite 480

11 Henderson, Nevada 89074

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 DEBBIE NOVOTNY

CASE NO.: A-21-829503-C

DEPT NO.: 18

17 Plaintiff,

18 vs.

19 SMITH'S FOOD AND DRUG CENTERS,
20 INC., and DOES I through X

21 Defendants

22 **REPLY TO OPPOSITION TO REQUEST FOR EXEMPTION FROM ARBITRATION**

23 Plaintiff, Debbie Novotny, by and through her attorney, Michael F. Bohn, Esq., replies to the
24 opposition to the petition for request for exemption as follows.

25 This case was filed seeking compensation for personal injuries sustained as a result of a slip and
26 fall accident at Smith Food and Drug located at 1000 North Green Valley Parkway, Henderson, Nevada
27 which occurred on February 21, 2019.

28 Counsel for the plaintiff was retained just a few days prior to the statute of limitations expiring.
As a result, the plaintiffs medical records and billing were not obtained prior to the time the complaint
was filed.

Initial records have been received from the hospital, but no billings have been obtained from any
of the plaintiffs medical providers.

1 Attached as Exhibit 1 is one page of the records from St. Rose Dominican Hospital in Henderson
2 dated February 24, 2019, which indicates “Comminuted fractures in the proximal tibia and fibula as
3 described. Hemarthrosis.” The same document indicates surgery was scheduled for March 5.

4 Although the medical billings have not been received, this is a substantial injury requiring surgery
5 and an extensive period of rehabilitation. It is reasonably anticipated that the medical bills alone will
6 far exceed the sum of \$50,000.00.

7 For this reason, the request for exemption from arbitration should be granted.

8 DATED this 7th day of April 2021.

9 LAW OFFICES OF
10 MICHAEL F. BOHN, ESQ., LTD.

11 By: / s / Michael F. Bohn, Esq. /
12 Michael F. Bohn, Esq.
13 2260 Corporate Circle, Suite 480
14 Henderson, Nevada 89074
15 Attorney for plaintiff
16
17

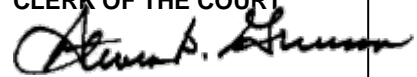
18 **CERTIFICATE OF SERVICE**

19 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
20 Offices of Michael F. Bohn., Esq., and on the 7th day of April, 2021, an electronic copy of the
21 RESPONSE TO OPPOSITION TO REQUEST FOR EXEMPTION FROM ARBITRATION was served
22 via the Court’s electronic service system, addressed as follows:

23 Jerry S. Busby
24 COOPER LEVENSON, P.A.
25 3016 West Charleston Boulevard - #195
Las Vegas, NV 89102

26 /s/ /Maggie Lopez/
27 An Employee of the LAW OFFICES OF
28 MICHAEL F. BOHN, ESQ., LTD.

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Steven D. Grierson
CLERK OF THE COURT



CDRG

DISTRICT COURT
CLARK COUNTY, NEVADA

Debbie Novotny, Plaintiff(s)

vs.

Smith's Food and Drug Centers, Inc.,

Defendant(s)

CASE NO: A-21-829503-C
DEPT. NO: XVIII

COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION

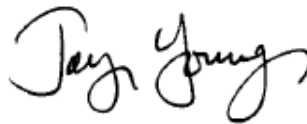
REQUEST FOR EXEMPTION FILED ON: March 29, 2021

EXEMPTION FILED BY: Plaintiffs OPPOSITION: Yes

DECISION

Having reviewed the Request for Exemption, and all related pleadings, the Request for Exemption is hereby GRANTED.

DATED this 14th of April, 2021.



ADR COMMISSIONER

NOTICE

Pursuant to Nevada Arbitration Rule 5(D), you are hereby notified you have five (5) days from the date you are served with this document within which to file written objections with the Clerk of Court and serve all parties. The Commissioner's Decision is deemed served three (3) days after the Commissioner's designee deposits a copy of the Decision in the U.S. Mail. **Pursuant to NEFCR Rule 9(f)(2) an additional 3 days is not added to the time if served electronically (via e-service).**

A copy of the foregoing Commissioner's Decision on Request for Exemption was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program on the date of e-filing.

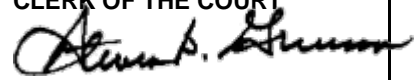
If indicated below, a copy of the foregoing Commissioner's Decision on Request for Exemption was also:

☐ Placed in the folder of counsel maintained in the Office of the Clerk of Court on _____, 2021.

☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at their last known address(es) on _____, 2021.

/s/ Loretta Walker
ADR COMMISSIONER'S DESIGNEE

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Steven D. Grierson
CLERK OF THE COURT



SUGG
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
NIKOLL NIKCI, ESQ.
Nevada Bar No.: 10699
nnikci@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
Attorney for defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERTO MENDEZ-HERNANDEZ, an
individual; ANGELICA RIVERA MARTINEZ,
an individual,

Plaintiffs,

vs.

OCTAVIO ESCOTO-PEREZ, an individual;
UNITED INVESTMENTS OF NEVADA, INC.
d/b/a UNITED REALTY GROUP, a domestic
corporation; TONY M BOND and DONNA L
BONAKDAR, as Trustees of the TONY M
BOND and DONNA L BONAKDAR
REVOCABLE TRUST; DOES I-X, inclusive;
and ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: A-19-807490-C
DEPT NO.: XXI

SUGGESTION OF DEATH

COME NOW defendants Octavio Escoto-Perez, United Investments of Nevada, Inc. d/b/a United
Realty Group, Donna L. Bonakdar, as Trustee of the Tony M. Bond and Donna L. Bonakdar Revocable

///

///

///

1 Trust, by and through their counsel of record, LAW OFFICES OF MICHAEL F. BOHN, ESQ, and
2 suggests upon the record, pursuant to NRCP 25(a)(2), the death of Tony Bond during the pendency of this
3 action.

4 DATED this 1st day of March, 2021.

5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.

7
8 By: /s/ Nikoll Nikci, Esq.
9 Michael F. Bohn, Esq.
10 Nikoll Nikci, Esq.
11 2260 Corporate Cir, Suite 480
12 Henderson, Nevada 89074
13 Attorney for defendants

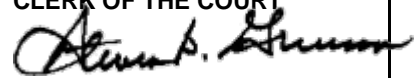
14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
16 Offices of Michael F. Bohn., Esq., and on the 1st day of March, 2021, an electronic copy of
17 **SUGGESTION OF DEATH** was served on opposing counsel via the Court's electronic service system
18 to the following counsel of record:

19 Jared B. Jennings, Esq.
20 Adam R. Fulton, Esq.
21 Logan G. Willson, Esq.
22 JENNINGS & FULTON, LTD.
23 2580 Sorrel Street
24 Las Vegas, NV 89146
25 *Attorneys for Plaintiffs Roberto*
26 *Mendez-Hernandez & Angelica Rivera Martinez*

27 /s/ /Nikoll Nikci, Esq.
28 An employee of Law Offices of
Michael F. Bohn, Esq., Ltd.

Electronically Filed
7/21/2021 2:38 PM
Steven D. Grierson
CLERK OF THE COURT



1 **SUGG**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 2260 Corporate Circle, Suite 480
8 Henderson, Nevada 89074
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for plaintiff

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15 DEBBIE NOVOTNY

CASE NO.: A-21-829503-C
DEPT NO.: 18

16 Plaintiff,

17 vs.

18 SMITH'S FOOD AND DRUG CENTERS,
19 INC., and DOES I through X

20 Defendants

21 **AMENDED AND CORRECTED SUGGESTION OF DEATH**

22 Please take notice that Michael F Bohn, Esq. the attorney for plaintiff, Debbie Novotny, suggests
23 upon the record, pursuant to NRCP 25(a)(2) the death of Debbie Novotny, plaintiff herein, during the
24 pendency of this action.

25 DATED this 21st day of July 2021.

26 LAW OFFICES OF
27 MICHAEL F. BOHN, ESQ., LTD.

28 By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn, Esq., and on the 21st day of July, 2021, an electronic copy of the SUGGESTION OF DEATH UPON THE RECORD was served via the Court's electronic service system, addressed as follows:

Jerry S. Busby
COOPER LEVENSON, P.A.
3016 West Charleston Boulevard - #195
Las Vegas, NV 89102

/s/ /Maggie Lopez/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1



St Rose Dominican Hospital-Siena Campus

3001 St Rose Parkway
Henderson, NV. 89052
Facility Phone #: 702-616-5000

Name: **NOVOTNY, DEBBIE L**

MRN: 00905713

Acct #: 65887457

Pt loc: SRS ORTH; 3333; P

Admit Date: 2/21/2019

Disch Date: 2/24/2019

Physician: Rahman, Syed F, MD

PCP: Reddy, Gautham G MD

Progress Notes

Hemarthrosis.

On the limited CT images anterior and posterior cruciate ligaments are grossly intact. Quadriceps tendon on and patellar tendon are not grossly intact.

IMPRESSION:

Comminuted fractures in the proximal tibia and fibula as described. Hemarthrosis.

Report generated on workstation: SRSDDIM035 02/21/19 07:42

+++++

Assessment/Plan

Closed left fibula fracture S82.409A

Closed left tibial fracture S82.209A

Will require ORIF

Questions answered regarding timing of surgery

She should see me back in the office on Wednesday or Friday of the upcoming week

Tentative plan for surgery on Tuesday, 5 March

Nonweightbearing

Elevation and ice for swelling

Knee immobilizer and last lying supine

Fall 972DCDB6-6058-47E5-9321-44B9DBFE0EC6

Fall from slipping on ice W00.9XXA

Tibial plateau fracture, left S82.142A

Will require ORIF

Questions answered regarding timing of surgery

She should see me back in the office on Wednesday or Friday of the upcoming week

Tentative plan for surgery on Tuesday, 5 March

Nonweightbearing

Elevation and ice for swelling

Knee immobilizer and last lying supine

*Electronically Signed By:**Pinegar, Caleb O DO ATC**On 02/24/19 15:34**Co Signature By:**Modified Signature By:*

EXHIBIT B

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
4 Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
5 Attorney for plaintiff

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 DEBBIE NOVOTNY

CASE NO.: A-21-829503-C
DEPT NO.: 18

11 Plaintiff,

12 vs.

13 SMITH'S FOOD AND DRUG CENTERS,
14 INC., and DOES I through X

15 Defendants

16 **PLAINTIFF'S 16.1 INITIAL LIST OF WITNESSES AND DOCUMENTS**

17 Plaintiff Debbie Novotny, by and through her attorneys, Law Office of Michael F. Bohn, Esq.,
18 submits the following list of witnesses and documents pursuant to NRCP 16.1:

19 **WITNESSES**

- 20 1. Debbie Novotny, plaintiff
21 c/o Michael F. Bohn, Esq.
22 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
23 2260 Corporate Circle, Suite 480
Henderson, Nevada 89074

24 Plaintiff is expected to testify as to the facts surrounding the allegations contained in the
25 Complaint and Answer on file herein.

26 ///

DOCUMENTS

1. Henderson Fire Department Records and Invoice in the amount of \$1,180.83,
bates stamps Novotny000001 - 000006;
2. St. Rose Dominican Siena Hospital Records and Invoice in the amount of \$142,721.00,
bates stamps Novotny000007 - 000991;
3. Bone & Joint Institute, Records and Invoice in the amount of \$4,576.00,
bates stamps Novotny000992 - 001036.

DAMAGES

The total medical specials of Debbie Novotny are summarized as follows:

Henderson Fire Department.....	\$1,180.83
St. Rose Dominican Siena Hospital	\$142,721.00
Bone and Joint Institute	<u>\$7,576.00</u>

TOTAL MEDICAL SPECIALS**\$151,477.83**

Plaintiff reserves the right to supplement this list of documents with documents which may become known through the discovery process and documents necessary for rebuttal and/or impeachment.

The Plaintiff also reserves the right to supplement the list of witnesses with those who become known and available. All of the Defendant's listed witnesses and documents are incorporated herein.

DATED this 23rd day of June, 2021.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 23rd day of June, 2021, an electronic copy of the PLAINTIFF'S 16.1 INITIAL LIST OF WITNESSES AND DOCUMENTS was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Jerry S. Busby, Esq.
COOPER LEVENSON, P.A.
3016 West Charleston Boulevard - #195
Las Vegas, NV 89102

/s/ /Maggie Lopez/
an Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.